

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA
Montana Nineteenth Judicial District Court, County of Lincoln

STATE OF MONTANA,)	
)	
Plaintiff,)	CAUSE NO. DC-16-040
)	
-vs-)	
)	DECISION
BRANDY KAY FELLOWS,)	
)	
Defendant.)	

On October 24, 2016, the District Court sentenced the Defendant to a commitment to the Montana Women's Prison for a period of eighteen (18) years, with ten (10) years suspended, for the offense of Count II: Burglary, a Felony, in violation of §45-6-204, MCA. The Court recommended that the Defendant complete Elkhorn Treatment Center Program prior to release. The Court granted the Defendant credit of time served in the amount of 203 days. The Court ordered the Defendant to pay a fine in the amount of \$5,000.00 payable to the Clerk of District Court in Libby, Montana.

On April 7, 2017, the Defendant's Application for review of that sentence was heard by the Sentence Review Division of the Montana Supreme Court (hereafter "the Division").

The Defendant was present and was represented by Peter Ohman of the Office of the State Public Defender. The State was not represented.

Before hearing the Application, the Defendant was advised that the Division has the authority not only to reduce the sentence or affirm it, but also increase it. The Defendant was further advised that there is no appeal from a decision of the Division. The Defendant acknowledged that she understood this and stated that she wished to proceed.

Rule 12, Rules of the Sentence Review Division of the Supreme Court of Montana, provides that, "The sentence imposed by the District Court is presumed correct. The sentence shall not be reduced or increased unless it is clearly inadequate or clearly excessive." (Section 46-18-904(3), MCA).

With respect to the custodial sentence for the underlying crime, the Division unanimously finds that the reasons advanced for modification are insufficient to hold that the custodial sentence imposed by the District Court is clearly inadequate or clearly excessive. However, there was a \$5,000 fine that was also imposed as part of the sentence. The Division unanimously finds that the fine is clearly excessive under the circumstances and that the fine should be eliminated. Pursuant to statute, a sentencing judge must determine whether or not a fine can be paid within a reasonable time. Given the nature of this particular crime, and given the Defendant's particular circumstances, the record does not support a finding that the Defendant can pay the \$5,000 fine within a reasonable time. The Defendant qualified for appointed counsel as an indigent person. She was incarcerated for approximately 8 months prior to sentencing. The Defendant's sentence includes an 8-year custodial component. Thus, she has not worked and earned income, and will not do so, for a substantial period of time. She doesn't have the reasonable ability to pay the fine. The Defendant's sentence is **MODIFIED to eliminate the \$5,000 fine**. The remaining terms and conditions of the sentence imposed are affirmed.

Done in open Court this 7th day of April, 2017.

DATED this 26 day of April, 2017.

SENTENCE REVIEW DIVISION



Hon. Brad Newman, Chairperson

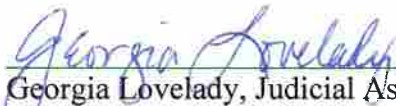


Hon. Kathy Seeley, Member



Hon. Brenda Gilbert, Member

Copies mailed this 27 day
of April, 2017, to:
Clerk of District Court (Original)
Brandy Kay Fellows #3020034, Defendant (2)
Hon. James Wheelis
Peter Ohman, Defense Counsel
Jeffrey Zwang, Esq.
Board of Pardons and Parole
MWP - Records Dept.



Georgia Lovelady, Judicial Assistant
Sentence Review Division